

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-O-16074-DFM
)	
ANDREA J. SMITH,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 277257,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Andrea J. Smith (Respondent) was charged with six counts of misconduct. She failed to participate either in person or through counsel, and her default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC) and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on June 1, 2011, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 1, 2014, the State Bar filed and properly served the Notice of Disciplinary Charges (NDC) on Respondent by certified mail, return receipt requested, to her membership records address. The NDC notified Respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was subsequently returned by the United State Postal Service as undeliverable. (See, however, Bus. & Prof. Code,³ § 6002, subd. (c) [service of NDC is effective on certified mailing of it to member's official membership address].)

Reasonable diligence was also used to provide Respondent with actual notice of this proceeding. The State Bar made several attempts to contact Respondent without success. These efforts included mailing a courtesy copy of the NDC to Respondent at her membership records address and emailing courtesy copies of the NDC to Respondent at her membership records email address and an alternative email address. In addition, prior to filing the NDC, the State Bar attempted to call Respondent at her membership records telephone number but received a message that the call could not be completed as dialed.

Respondent failed to file a response to the NDC. On May 19, 2014, the State Bar filed and properly served a motion for entry of default on Respondent by certified mail, return receipt

³ Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code

requested, at her membership records address. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.) The motion also notified Respondent that, if she did not timely move to set aside her default, the court would recommend her disbarment. Respondent did not file a response to the motion, and her default was entered on June 9, 2014. The order entering the default was properly served on Respondent at her membership records address by certified mail, return receipt requested.⁴ The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order. She has remained inactively enrolled since that time.

Respondent has not sought to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On December 19, 2014, the State Bar filed and properly served the petition for disbarment on Respondent by certified mail, return receipt requested, to her membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) Respondent has not contacted the State Bar after her default was entered on June 9, 2014; (2) there are no other disciplinary matters pending against Respondent; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payment resulting from Respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on January 15, 2015.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a Respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set

⁴ A copy of this order was also mailed to Respondent at her membership records address.

forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged, except as otherwise noted, and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

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Count One - The court does not find Respondent culpable of willfully violating Rules of Professional Conduct, rule 3-110(A) (failure to perform) as the factual allegations of the NDC do not show that Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.⁵

Count Two - Respondent willfully violated Rules of Professional Conduct, rule 3-700(A)(2) (improper withdrawal from employment) by failing, upon termination, to sign and file a substitution of counsel form that her client had signed and returned to Respondent for her signature.

Count Three - Respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2) (failure to refund unearned fees) by failing to promptly refund to her client unearned advanced fees.

Count Four - Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to account) by failing to provide her client with an appropriate accounting of advanced fees upon termination of employment.

Count Five - Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to respond to client inquiries), by failing to promptly respond to four written and five telephonic status inquiries reasonably made by Respondent's client.

⁵ The State Bar merely alleged that Respondent performed no legal services of value. This allegation is vague and arbitrary and does not establish, by clear and convincing evidence, that Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

Count Six - Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation), by failing to provide a substantive response to the allegations in a disciplinary investigation or otherwise cooperate in the investigation of this matter after being contacted by the State Bar.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and Respondent's disbarment is recommended. In particular:

(1) the NDC was properly served on Respondent under rule 5.25;

(2) reasonable diligence was used to notify Respondent of the proceedings prior to the entry of her default, as the State Bar mailed a courtesy copy of the NDC to Respondent at her membership records address; emailed a courtesy copy of the NDC to Respondent at her membership records email address and an alternative email address; and, prior to filing the NDC, called Respondent at her membership records telephone number.

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that Respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, Respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

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RECOMMENDATION

Disbarment

The court recommends that respondent **Andrea J. Smith**, State Bar number 277257, be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **Andrea J. Smith**, State Bar number 277257, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: March ____, 2015

DONALD F. MILES
Judge of the State Bar Court